

Application No.: 09/932,910

Response dated: November 3, 2003

Reply to Office Action of July 14, 2003 and Advisory Action of October 14, 2003

REMARKS

Reconsideration of the present claims, in light of the attached claim clarifications and the Remarks, which follow, is respectfully requested.

Claims now before the Examiner are 1-2, 4-13, and 15-36.

The numbering in this response will follow that of the Examiner's Action of July 14, 2003.

The Advisory Action of October 14, 2003 stated that the provisos in the independent claims were new matter. Applicants respectfully disagree. In one of the provisos "with the proviso that M is not tungsten" this particular metal is included in the Markush group in the specification as filed at page 2, line 19. At this location "group 3 to 10 or lanthanide transition metal compounds" may be found. This includes tungsten. Applicants have the right to disclaim parts of their invention for among other reasons, obviate prior art, as in this case. With regard to the second proviso "with the proviso that when M is titanium, the hetero atom in R¹ and R⁵ is not oxygen" clearly the Applicants had possession of this subject matter in the specification as filed at page 3, line 15 carried over to page 4, line 8, where R¹ to R⁵ may be a heteroatom, including oxygen, and M may be titanium, so again, Applicants have disclaimed part of their original invention to obviate prior art. The courts have held that the claimed subject matter need not be described *in haec verba* in the specification, when the specification clearly conveys to those skilled in the art the information that Applicant has invented. (In re Wright, 9 USPQ.2d 1649, CAFC 1989).

1. No response necessary.

Rejections Under 35 USC § 102, second paragraph

2. *Claims 1, 5, 6, 8, 11, 12, 20-22, and 30-35 stand rejected under 35 USC § 112, Second (First) Paragraph*

Claim 1: All of the Examiner's suggestions regarding changes to this claim have been made, with the following exceptions/comments: the Examiner questions "it is not

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clear why R^1 is not one of the groups that may contain a heteroatom", to which applicants respond: as originally written, R^1 could have contained a heteroatom, it is not however, mandatory. As amended, R^1 may still contain a heteroatom, it may not however contain oxygen when M is titanium. Also the Examiner questions "In l. 13-14, the R group may not be R^3 , hence the R group may not be any of R^1 to R^5 as there recited." Applicants have amended the claim so that now the R group containing a heteroatom which may be either of R^1 or R^5 . Last, the Examiner states "In l. 27 change "than" to --then--and "metal carbon" to --ipso carbon--." Applicants have changed "than" to -- then --, but "metal carbon" should have been "meta carbon", this change has been made and should eliminate any confusion, and this would be understood by the skilled person to be a typographical mistake.

Claim 3: Cancelled.

Claim 4: The suggestion by the Examiner has been changed in the claim.

Claim 5: The deletion requested by the Examiner has been made. Further, the added compounds were erroneously deleted from the claim previously.

Claim 7: The suggestions by the Examiner have been changed in the claim.

Claim 8: Applicants' claim term "Ziegler-Natta catalyst" is fully supported by the Specification at paragraph [034]. Applicants have discharged their duty by first stating where "Ziegler-Natta" catalyst descriptions may be found at Lines 19-22 of page 9 in the same paragraph. "In a preferred embodiment a Ziegler-Natta catalyst as described in Ziegler-Natta Catalysts and Polymerizations, John Boor, Academic Press, New York, 1979 (with or without a separate activator) is combined with a catalyst system of this invention and used to polymerize one or more olefins." Further, at paragraph [066] Applicants have stated that all documents described herein (in the Specification) are incorporated by reference. If the Examiner requires it, Applicants will amend the Specification to include the relevant portions of this incorporated document.

Claim 11: The suggestion made by the Examiner has been inserted.

Claim 12: All of the suggestions of the Examiner regarding changes to this claim have been made, with the following exceptions/comments: the Examiner questions "it is not clear why R^1 is not one of the groups that may contain a heteroatom", to which

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applicants respond: as originally written, R¹ could have contained a heteroatom, it is not however, mandatory. As amended, R¹ may still contain a heteroatom, it may not however contain oxygen when M is titanium. Also the Examiner questions "In l. 12, the bond to the R group cannot be to any of the R groups since R³ does not contain a heteroatom, hence, the R groups should be recited specifically R^{1,2,4} or ⁵." Applicants have amended the claim so that now the R group containing a heteroatom may be either of R¹ or R⁵.

Claim 14: Cancelled.

Claim 21: The suggestion made by the Examiner has been inserted.

Claim 22: The suggestion made by the Examiner has been inserted.

Claim 23: As amended, Claim 23 now is proper in its relation to independent claim 12.

Claim 29: The Examiner's suggestions have been changed in the claim.

Withdrawal of the Rejections is respectfully requested.

Rejections Under 35 USC § 102

3. & 4. *Claims 1, 12, 16-18, 20, 26 and 35 stand Rejected under 35 USC § 102(b) as Anticipated by US 4,981,931 (Bell).*

As amended, claims 1 and 12, and those that depend from them exclude tungsten as the metal. The Bell document discloses only tungsten as a metallic basis for Bell's catalyst component. Absent any disclosure to the metallic elements of the present claims, Bell does not Anticipate the present claims.

Accordingly, withdrawal of the Rejection is respectfully requested.

5. *Claims 1, 2, 12, 13, 16-18, and 26 stand Rejected under 35 USC § 102(b) as Anticipated by EP 0 259 215 (Basset) (US 4,861,848).*

As amended, claim 1, and those that depend from it, exclude tungsten as the metal. The Basset document discloses only tungsten as a metallic basis for Basset's catalyst component. Absent any disclosure to the metallic elements of the present claims, Basset does not Anticipate the present claims.

Accordingly, withdrawal of the Rejection is respectfully requested.

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6. *Claims 1-4 and 11 stand Rejected under 35 USC § 102(e) as Anticipated by US 5,840,646 (Katayama).*

Katayama discloses two phenoxides that are linked together. As amended, the present claims are structures that do not contain oxygen in the ortho position, as taught in Katayama.

Accordingly, withdrawal of the Rejection is respectfully requested.

7. *Claims 1-3, 12, 13, 16, 23, 24 and 27 stand Rejected under 35 USC § 102(b) as Anticipated by Applied Catalysis, Vol. 22, pp. 345-359 (1986) (Coleman).*

Coleman discloses two phenoxides that are linked together. As amended, the present claims are structures that do not contain oxygen in the ortho position as taught in Coleman.

Accordingly, withdrawal of the Rejection is respectfully requested.

8. 9. & 10. No response necessary.

All of the Examiner's Rejections have been addressed.

The claims are in condition for allowance.

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Krchnak Enterprises

SOUTHWEST PATENT SVS

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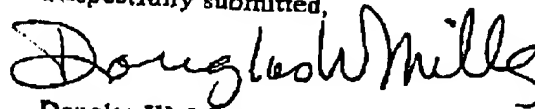
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Respectfully submitted,

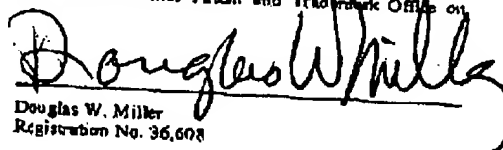


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